

## CIVIL COVER SHEET

JS 44 (Rev. 11/04)

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

## I. (a) PLAINTIFFS

Brice, Tracy \*see attached list  
Severe-Clarke, Perlyn

(b) County of Residence of First Listed Plaintiff Philadelphia  
(EXCEPT IN U.S. PLAINTIFF CASES)

ID#50417

ID# 35754

Jill Fisher, Esq., and David F. McComb, Esq.

Zarwin, Baum, DeVito, Kaplan, Schaer &amp; Toddy, P.C. Attorneys (If Known)

1515 Market St., Suite 1200, Phila., PA 19102

(215) 569-2800

## DEFENDANTS

Community Council for Mental Health & Mental  
Retardation, Inc.\*see attached list for additional

County of Residence of First Listed Defendant Philadelphia  
(IN U.S. PLAINTIFF CASES ONLY) defendants

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE  
LAND INVOLVED.

## II. BASIS OF JURISDICTION

(Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff  
☐ 2 U.S. Government Defendant  
☒ 3 Federal Question  
(U.S. Government Not a Party)  
☐ 4 Diversity  
(Indicate Citizenship of Parties in Item III)

## III. CITIZENSHIP OF PRINCIPAL PARTIES

(Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | PTF  | DEF  | PTF                        | DEF                        |
|--|--|----------------------------|----------------------------|
| <input type="checkbox"/> 1 Citizen of This State                   | <input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State     | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| <input type="checkbox"/> 2 Citizen of Another State                | <input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| <input type="checkbox"/> 3 Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 Foreign Nation  | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

## IV. NATURE OF SUIT

(Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	<b>PERSONAL INJURY</b> <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <b>PERSONAL INJURY</b> <input type="checkbox"/> 362 Personal Injury - Med. Malpractice <input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability <b>PERSONAL PROPERTY</b> <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs. <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other <b>LABOR</b> <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 <b>PROPERTY RIGHTS</b> <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark <b>SOCIAL SECURITY</b> <input type="checkbox"/> 861 HIA (1395f) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) <b>FEDERAL TAX SUITS</b> <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Information Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes
<b>REAL PROPERTY</b> <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<b>CIVIL RIGHTS</b> <input type="checkbox"/> 441 Voting <input checked="" type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights	<b>PRISONER PETITIONS</b> <input type="checkbox"/> 510 Motions to Vacate Sentence <b>Habeas Corpus:</b> <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition		

## V. ORIGIN

(Place an "X" in One Box Only)

- ☒ 1 Original Proceeding  
☐ 2 Removed from State Court  
☐ 3 Remanded from Appellate Court  
☐ 4 Reinstated or Reopened  
☐ 5 Transferred from another district (specify)  
☐ 6 Multidistrict Litigation  
☐ 7 Appeal to District Judge from Magistrate Judgment

## VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
42 U.S.C. Section 1983

Brief description of cause: Retaliatory discharge from employment/First Amendment violations.

## VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 DEMAND \$ in excess of \$150,000 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

## VIII. RELATED CASE(S) IF ANY

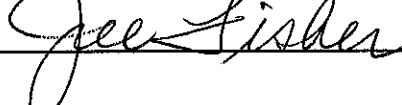
(See instructions):

JUDGE

DOCKET NUMBER

DATE 3/6/08

SIGNATURE OF ATTORNEY OF RECORD



FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

CASE MANAGEMENT TRACK DESIGNATION FORM

Tracy Brice, et al	:	CIVIL ACTION
	:	
	:	
v.	:	
Community Council for Mental Health	:	
and Mental Retardation, Inc., et al	:	NO.

In accordance with the Civil Justice Expense and Delay Reduction Plan of this court, counsel for plaintiff shall complete a case Management Track Designation Form in all civil cases at the time of filing the complaint and serve a copy on all defendants. (See § 1:03 of the plan set forth on the reverse side of this form.) In the event that a defendant does not agree with the plaintiff regarding said designation, that defendant shall, with its first appearance, submit to the clerk of court and serve on the plaintiff and all other parties, a case management track designation form specifying the track to which that defendant believes the case should be assigned.

**SELECT ONE OF THE FOLLOWING CASE MANAGEMENT TRACKS:**

- (a) Habeas Corpus – Cases brought under 28 U.S.C. §2241 through §2255. ( )
- (b) Social Security – Cases requesting review of a decision of the Secretary of Health and Human Services denying plaintiff Social Security Benefits ( )
- (c) Arbitration – Cases required to be designated for arbitration under Local Civil Rule 53.2. ( )
- (d) Asbestos – Cases involving claims for personal injury or property damage from exposure to asbestos. ( )
- (e) Special Management – Cases that do not fall into tracks (a) through (d) that are commonly referred to as complex and that need special or intense management by the court. (See reverse side of this form for a detailed explanation of special management cases.) (x)
- (f) Standard Management – Cases that do not fall into any one of the other tracks. ( )

<u>March 6, 2008</u>	<u>Jill Fisher, Esquire</u>	<u>Plaintiffs</u>
Date	Attorney-at-law	Attorney for
<u>215-569-2800</u>	<u>215-569-1606</u>	<u>jfisher@zarwin.com</u>
Telephone	FAX Number	E-Mail Address

FOR THE EASTERN DISTRICT OF PENNSYLVANIA — DESIGNATION FORM to be used by counsel to indicate the category of the case for the purpose of assignment to appropriate calendar.

Address of Plaintiff: Tracy Brice, 5737 Chestnut St., Phila., PA 19139 \*see attached list for add'l plaintiff  
 Address of Defendant: Community Council for Mental Health & Mental Retardation, Inc. \*see attached list  
4900 Wyalusing Ave., Phila., PA 19131  
 Place of Accident, Incident or Transaction: 4900 Wyalusing Avenue, Philadelphia PA 19131 for add'l defendant  
 (Use Reverse Side For Additional Space)

Does this civil action involve a nongovernmental corporate party with any parent corporation and any publicly held corporation owning 10% or more of its stock?

(Attach two copies of the Disclosure Statement Form in accordance with Fed.R.Civ.P. 7.1(a))

Yes ☐ No ☐

Does this case involve multidistrict litigation possibilities?

Yes ☐ No ☒

RELATED CASE, IF ANY:

Case Number: \_\_\_\_\_ Judge \_\_\_\_\_ Date Terminated: \_\_\_\_\_

Civil cases are deemed related when yes is answered to any of the following questions:

1. Is this case related to property included in an earlier numbered suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
2. Does this case involve the same issue of fact or grow out of the same transaction as a prior suit pending or within one year previously terminated action in this court?  
Yes ☐ No ☒
3. Does this case involve the validity or infringement of a patent already in suit or any earlier numbered case pending or within one year previously terminated action in this court?  
Yes ☐ No ☒

CIVIL: (Place ☒ in ONE CATEGORY ONLY)

A. Federal Question Cases:

1. ☐ Indemnity Contract, Marine Contract, and All Other Contracts
2. ☐ FELA
3. ☐ Jones Act-Personal Injury
4. ☐ Antitrust
5. ☐ Patent
6. ☐ Labor-Management Relations
7. ☒ Civil Rights
8. ☐ Habeas Corpus
9. ☐ Securities Act(s) Cases
10. ☐ Social Security Review Cases
11. ☐ All other Federal Question Cases  
(Please specify)

B. Diversity Jurisdiction Cases:

1. ☐ Insurance Contract and Other Contracts
2. ☐ Airplane Personal Injury
3. ☐ Assault, Defamation
4. ☐ Marine Personal Injury
5. ☐ Motor Vehicle Personal Injury
6. ☐ Other Personal Injury (Please specify)
7. ☐ Products Liability
8. ☐ Products Liability — Asbestos
9. ☐ All other Diversity Cases  
(Please specify)

ARBITRATION CERTIFICATION

(Check appropriate Category)

I, Jill Fisher, counsel of record do hereby certify:

☒ Pursuant to Local Civil Rule 53.2, Section 3(c)(2), that to the best of my knowledge and belief, the damages recoverable in this civil action case exceed the sum of \$150,000.00 exclusive of interest and costs;

☒ Relief other than monetary damages is sought.

DATE: March 6, 2008

Jill Fisher  
Attorney-at-Law

50417

Attorney I.D.#

NOTE: A trial de novo will be a trial by jury only if there has been compliance with F.R.C.P. 38.

I certify that, to my knowledge, the within case is not related to any case now pending or within one year previously terminated action in this court except as noted above.

DATE: March 6, 2008

Jill Fisher  
Attorney-at-Law

50417

Attorney I.D.#

**IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF PENNSYLVANIA**

TRACY BRICE  
5737 Chestnut Street,  
Philadelphia, Pennsylvania 19139

and

PERLYN SEVERE-CLARKE  
3131 Meeting House Road, M2  
Boothwyn, Pennsylvania 19061

*Plaintiffs*

v.

COMMUNITY COUNCIL for MENTAL  
HEALTH & MENTAL RETARDATION, Inc.  
4900 Wyalusing Avenue  
Philadelphia, Pennsylvania 19131;

DARIUS L. GILBERT  
4900 Wyalusing Avenue  
Philadelphia, Pennsylvania 19131;

SHERMONT FOX  
4900 Wyalusing Avenue  
Philadelphia, Pennsylvania 19131;

KIANA ROSS  
4900 Wyalusing Avenue  
Philadelphia, Pennsylvania 19131;

RICARDO GOODMAN  
4900 Wyalusing Avenue  
Philadelphia, Pennsylvania 19131;

SCHOOL DISTRICT of PHILADELPHIA;  
440 North Broad Street  
Philadelphia, Pennsylvania 19130;

THOMAS M. BRADY, in his official  
capacity as Interim Chief Executive Officer  
of the School District of Philadelphia  
440 North Broad Street  
Philadelphia, Pennsylvania 19130;

**COMPLAINT**

**AND JURY DEMAND**

**CIVIL ACTION NO.:**

CAROLYN JACKSON, individually and in :  
her official capacity as Principal of Martha :  
Washington Elementary School :  
440 North Broad Street :  
Philadelphia, Pennsylvania 19130 :

and :

TONIA BROWN :  
4900 Wyalusing Avenue :  
Philadelphia, Pennsylvania 19131 :  
*Defendants* :

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**JURISDICTION and VENUE**

1. Jurisdiction of this Court arises under 42 U.S.C. Section 1983 and 28 U.S.C. Sections 1343(3) and 1367(a) (supplemental jurisdiction).
2. Jurisdiction of this Court for the pendant claims is authorized by F.R. Civ. P.18(a) and arises under the doctrine of pendant jurisdiction set forth in *United Mine Workers v. Gibbs*, 383 U.S. 715 (1966).
3. Venue is proper pursuant to 28 U.S.C. Section 1391 (b) and (c).

**PARTIES**

4. Plaintiff, Tracy Brice ("Brice"), an adult resident of Philadelphia, Pennsylvania, brings this action to redress Defendants' conduct in conspiring to deprive her of her constitutional, statutory and common law rights when they terminated her employment with Community Council for Mental Health and Mental Retardation, Inc. ("Community Council") after she reported improper, unsafe and unlawful conduct on the part of Tonia Brown, a teacher at Martha Washington Elementary School, which conduct Plaintiff Brice reasonably believed placed the children under Tonia Brown's care at serious risk of physical and emotional harm.

5. Plaintiff, Perlyn Severe-Clarke (“Severe-Clarke”), an adult resident of Philadelphia, Pennsylvania, brings this action to redress Defendants’ conduct in conspiring to deprive her of her constitutional and statutory rights when they terminated her employment with Community Council after she reported improper, unsafe and unlawful conduct on the part of Tonia Brown, which conduct Plaintiff Severe-Clarke reasonably believed placed the children under Tonia Brown’s care at serious risk of physical and emotional harm.

6. Defendant, Community Council, is a non-profit corporation incorporated and existing under the laws of the Commonwealth of Pennsylvania with its principal offices located at 4900 Wyalusing Avenue, Philadelphia, Pennsylvania, 19131. At all relevant times hereto, Defendant Community Council acted by and through its directors, officers, trustees, board members, employees and/or agents, and was Plaintiffs’ employer.

7. Defendant, School District of Philadelphia (“School District”), is a political subdivision of the Commonwealth of Pennsylvania with its principal offices located at 440 North Broad Street, Philadelphia, Pennsylvania, 19130, and provides educational services to students in Philadelphia’s public schools.

8. At all times relevant hereto, Defendant Community Council was contractually and/or otherwise affiliated with Defendant School District to operate, staff and provide, among other services, therapeutic / emotional classroom support for special needs children in Philadelphia public schools, including Martha Washington Elementary School, thereby performing a municipal function.

9. At all times relevant hereto, Defendant Community Council was an agent of Defendant School District, and all directors, officers, trustees, employees and/or agents of Defendant Community Council acted within the course and scope of their agency.

10. At all times relevant hereto, Defendant Community Council received funds, directly and/or indirectly, by or through the Commonwealth of Pennsylvania and/or a political subdivision authority, including the School District of Philadelphia.

11. Defendant, Thomas M. Brady ("Brady"), an adult individual and a Pennsylvania resident, is the Interim Chief Executive Officer of Defendant School District.

12. Defendant, Carolyn Jackson ("Jackson"), is an adult individual who, at all times relevant hereto, was employed by Defendant School District as Principal of Martha Washington Elementary School, a Philadelphia public school located at 766 North 44<sup>th</sup> Street, Philadelphia, Pennsylvania, 19104, and acted within the course and scope of her employment and in a supervisory position over Plaintiffs. Upon information and belief, Defendant Jackson is a resident of the Commonwealth of Pennsylvania.

13. At all times relevant hereto, Defendant School District's directors, directly and/or indirectly, delegated to and clothed Defendant School District and Defendant Jackson, as Principal of Martha Washington Elementary School, with decision-making authority regarding Plaintiffs' placement in the classroom at Martha Washington Elementary School and her termination of employment from Defendant Community Council.

14. Defendant, Tonia Brown ("Brown"), is an adult individual who, at all times relevant hereto, was employed by Defendant Community Council and assigned to Martha Washington Elementary School as a classroom teacher. Upon information and belief, Defendant Brown is a resident of the Commonwealth of Pennsylvania.

15. At all times relevant hereto, Defendant Brown was a quasi-employee of Defendant School District and acted within the course and scope of her employment and in a supervisory position over Plaintiffs.

16. Defendant, Darius L. Gilbert ("Gilbert"), is an adult individual who, at all times relevant hereto, was employed by Defendant Community Council as a clinical supervisor and was Plaintiffs' supervisor. Upon information and belief, Defendant Gilbert is a resident of the Commonwealth of Pennsylvania.

17. Defendant, Shermont Fox ("Fox"), is an adult individual who, at all times relevant hereto, was employed by Defendant Community Council as a clinical supervisor and was Plaintiffs' supervisor. Upon information and belief, Defendant Fox is a resident of the Commonwealth of Pennsylvania.

18. Defendant, Kiana Ross ("Ross"), is an adult individual who, at all times relevant hereto, was employed by Defendant Community Council as a teacher manager and was Plaintiffs' and Defendant Brown's supervisor. Upon information and belief, Defendant Ross is a resident of the Commonwealth of Pennsylvania.

19. Defendant, Ricardo Goodman ("Goodman"), is an adult individual who, at all times relevant hereto, was employed by Defendant Community Council as a teacher manager and was Plaintiffs' and Defendant Brown's supervisor. Upon information and belief, Defendant Goodman is a resident of the Commonwealth of Pennsylvania.

20. At all times relevant hereto, Plaintiffs were quasi-employees of Defendant School District and acted within the course and scope of their employment.

### **FACTS**

21. Plaintiffs incorporate by reference paragraphs 1 through 20 of this Complaint as though fully set forth herein.

22. In September, 2007, Plaintiffs were assigned by Defendant Community Council to Martha Washington Elementary School to provide therapeutic / emotional support for the students in Defendant Brown's classroom, which was an emotional support classroom for children with special needs. Plaintiff Severe-Clarke served as a clinical therapist and Plaintiff Brice served as an associate counselor. At the time of Plaintiffs' termination, there were twelve (12) students in the classroom who ranged in age from 9 years old to 13 years old.

23. On or about September 26, 2007, Plaintiff Severe-Clarke reported to Defendant Gilbert that she had observed Defendant Brown engaging in improper, unsafe and unlawful conduct, including, but not limited to:

- a. forcing students to stand with their hands in the air, on one occasion for up to 2 hours;
- b. withholding food (lunch) from the students; and
- c. verbally abusing them, including but not limited to calling them names, for example calling one student "black, crispy and ashy" and another student "Turtle" who, because of mental and physical disabilities, moved and spoke slowly.

24. In response to the above information provided by Plaintiff Severe-Clarke, a meeting was held at Martha Washington School with Plaintiff Severe-Clarke and Defendants Gilbert, Fox, Ross and Brown in attendance. Plaintiff was admonished by

Defendants Gilbert, Fox, and/or Ross that she needed to “work together” with Defendant Brown, but Defendant Brown was not reprimanded at that meeting about her improper, unsafe and unlawful conduct.

25. In addition to the above-described improper, unsafe and unlawful conduct of Defendant Brown, Plaintiffs observed Defendant Brown’s practice of requiring the students in her class to move their desks to the perimeter of the classroom and, at her direction and urging, making two students chosen by her engage in a fist fight in front of the other students in the classroom.

26. On one particular occasion, when two students began fist fighting after being required to do so by Defendant Brown, Plaintiff Brice attempted to intervene but was told not to intervene by Defendant Brown. Plaintiff Brice reported this incident to Defendant Community Council by placing a telephone call to the Human Resources department.

27. Based on the fact that Defendant Brown did not stop making the students fight, Defendant Community Council took no appropriate action, if any at all, to put an end to Defendant Brown’s wrongful conduct.

28. On another occasion, Plaintiffs observed Defendant Brown pick up one student by the neck and shove him up against a wall, yelling at him, “Shut up! I’ve had enough of you.” Plaintiff Brice reported the incident to Defendant Fox. Defendant Fox responded by stating to Plaintiff Brice, among other things, “Don’t call me with nonsense like this.”

29. Prior to the above-described shoving incident, Plaintiff Severe-Clarke had advised Defendant Brown and teacher floater Carl Butler, an employee of Defendant

Community Council, that this particular student required a higher level of care because of, among other things, his physical and verbal aggressiveness, but the student was not placed in a higher level of care program.

30. On or about the end of November or the beginning of December, 2007, Plaintiff Severe-Clarke told Defendant Gilbert at a face-to-face meeting about Defendant Brown's practice of making her students fist fight in the classroom in front of the other students. Defendant Gilbert made no comment whatsoever to Plaintiff Severe-Clarke about Defendant Brown's actions, but simply went on to discuss other topics.

31. Subsequent to the above-referenced face-to-face meeting, on Friday, December 7, 2007, at about 3:00 p.m., Defendant Ross called an impromptu, brief meeting with Plaintiffs to tell them that, starting on Monday, December 10, 2007, they would be required to sign in at the front desk of Martha Washington Elementary School at the start of the workday, even though they had never been required to sign in before. Plaintiffs were never given any written directive to that effect.

32. Because (a) they had not been in the practice of signing in, (b) the instructions were given to them in such an informal way, and (c) their early morning duties required them, at times, to be stationed outside the school where the buses discharged the students, Plaintiffs admittedly forgot to sign in.

33. However, at no time prior to their respective terminations on December 17, 2007 and December 18, 2007 did anyone from Defendant Community Council or from Defendant School District warn Plaintiffs, let alone remind them, that they were to sign in, despite Defendant Community Council's "Performance Management Counseling and Discipline" Policy in its employee handbook which states, "Performance

management is designed to turn the employee around and save them from termination. Insure that you have done everything possible to help the employee succeed.”

34. On Thursday, December 13, 2007, in the classroom, Plaintiff Brice videotaped on her camera cell phone one of Defendant Brown’s “fights” between two students. In the video Defendant Brown can be seen goading the students on. When Defendant Brown realized that Plaintiff Brice had videotaped the fight, she pleaded with her, on several occasions, to erase the video, stating that she (Brown) “could be fired” and “the School District sued.”

35. Thereafter, in fear of being exposed and in an attempt to save her own job, Defendant Brown fabricated allegations that Plaintiffs were not doing their jobs and communicated these allegations, directly and/or indirectly, to all or some of the other Defendants.

36. On Monday, December 17, 2007, a team meeting was held in Defendant Jackson’s Office at Martha Washington Elementary School, *purportedly* to discuss a particular incident involving a student who had allegedly been put in a closet (that had no doors) by another child, and that the incident had not been reported by Plaintiff Severe-Clarke. In attendance at the team meeting were Ms. Jones, the school counselor, and Defendants Jackson, Fox, Ross and Goodman. Upon information and belief, a representative from Defendant School District (name and position unknown) also attended the meeting. Although Plaintiffs’ job duties, and the Individuals with Disabilities Education Act, 20 U.S.C. Section 1400 *et seq.* (“ADEA”), required them to attend team meetings when the meetings concerned the behavior of the students,

Plaintiffs were intentionally not included in this team meeting and, in fact, were not even told that the meeting had taken place until their termination.

37. Because of her preclusion from the above-mentioned team meeting, Plaintiff Severe-Clarke was not given an opportunity to explain that she had not observed the alleged “closet” incident and, thus, could not report an event she did not know about at the time.

38. About one hour after the above-mentioned meeting had started (a mere four days – and just two school days – after the video was recorded), Defendant Goodman came to the classroom and told Plaintiffs to pack their belongings, leave the school and go back to Community Council.

39. Late in the day on December 17, 2007, Plaintiff Brice was called into a meeting at Defendant Community Council. At the meeting were Defendants Fox and Goodman, Aulcie Perry, Human Resources representative, and Lamar Brooks (position unknown). Aulcie Perry advised Plaintiff Brice that she was being terminated because of alleged tardiness.

40. At the termination meeting on December 17, 2008, in contravention of Defendant Community Council’s progressive four stages of performance management stated in its employee handbook, Aulcie Perry handed Plaintiff Brice several “Warning Notices” dated December 10<sup>th</sup>, December 12<sup>th</sup> and December 13<sup>th</sup> about alleged tardiness on those dates.

41. Plaintiff Brice had never seen the above-mentioned warning notices until the termination meeting, nor had any defendant discussed her alleged tardiness on those dates with her anytime prior to December 17<sup>th</sup>. Nonetheless, Plaintiff Brice was told to

sign the warning notices, even though the respective dates on the signature line on the three notices were the 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> of December, not December 17, the actual date the notices were handed to her.

42. Also, at the termination meeting, Aulcie Perry read a letter aloud to Plaintiff Brice from Defendant Jackson, which stated, in part, that Defendant Jackson did not want them (Plaintiffs) in her school. At the conclusion of the termination meeting, Defendant Fox stated to Plaintiff Brice that Community Council was not about to lose their funding from Defendant School District because of them (Plaintiffs).

43. On December 18, 2007, Plaintiff Severe-Clarke was terminated from her employment with Defendant Community Council. At the termination meeting were Aulcie Perry, Defendants Fox, Gilbert and Goodman and one other Community Council employee. Plaintiff Severe-Clarke showed the individuals in attendance at the meeting the video of the fight recorded on Plaintiff Brice's camera cell phone.

44. None of the Defendants in attendance at the termination meeting even asked Plaintiff Severe-Clarke any questions about the scene captured on the video or about Defendant Brown's practice of making her students fight each other, or any other reported wrongdoing on Defendant Brown's part.

45. Aulcie Perry told Plaintiff Severe-Clarke that the reason for her termination was alleged tardiness and alleged substandard work (i.e., not reporting to Community Council the alleged incident of the student being placed in the closet by another student.)

46. At the termination meeting, Aulcie Perry handed Plaintiff Severe-Clarke

three “Warning Notices” dated December 10<sup>th</sup>, December 12<sup>th</sup> and December 13<sup>th</sup> about alleged tardiness on those dates. Plaintiff Severe-Clarke had never seen those warning notices until the termination meeting, nor had any Defendant discussed the alleged tardiness on those dates with her anytime prior to December 18<sup>th</sup>. Nonetheless, Plaintiff Severe-Clarke was told to sign the documents, even though the dates on the signature lines were December 10<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup>, not December 18<sup>th</sup>, the actual date the notices were handed to her.

47. When Plaintiff Severe-Clarke protested that she had not received the write-ups prior to that date, in contravention of Defendant Community Council’s employee handbook policies, Aulcie Perry responded, “We have a major funding source that does not want you in the school.”

48. Aulcie Perry also read to Plaintiff Severe-Clarke the above-referenced letter written by Defendant Jackson to Defendant Community Council that stated that Defendant Jackson did not want Plaintiffs in Defendant Brown’s classroom.

49. At the conclusion of the termination meeting, Aulcie Perry, attempted to grab certain documents from Plaintiff Severe-Clarke’s hands and shoved her against the office wall, causing her pain to her shoulder.

50. As a consequence of being terminated from her position at Martha Washington School, Plaintiff Severe-Clarke was also terminated from a second position she had with Defendant Community Council as a mobile therapist for three clients in their homes. No attendance or performance issues were ever raised with Plaintiff Severe-Clarke with regard to this position.

51. In a December 21, 2007 “termination letter” addressed to Plaintiff Severe-Clarke, Aulcie Perry wrote, “Mrs. Severe-Clarke was banned from the premises at Martha Washington Elementary School by the principal Mrs. Jackson.”

52. Following their termination, Plaintiffs applied for and were awarded unemployment compensation benefits. Defendant Community Council appealed the award of benefits awarded to Plaintiff Severe-Clarke only. An unemployment compensation hearing was held on January 31, 2008 before Referee Rodney Dietrich. The Referee affirmed the award of unemployment compensation benefits to Plaintiff Severe-Clarke, finding that Defendant Community Council had not followed its own discipline policies in terminating Plaintiff.

53. Plaintiffs reported the wrongdoing on the part of Defendant Brown, as above-described, to Defendant Community Council because they reasonably believed that Defendant Brown’s conduct was intentional, improper, unsafe, prohibited by school and/or school district policy and violated Pennsylvania’s Child Protective Services Law (“CPSL”), 23 Pa.C.S. Section 6301 *et seq.* in that it was committed with disregard of a substantial and unjustifiable risk of physical and emotional harm to the students.

54. However, at no time following Plaintiffs’ reports of wrongdoing on the part of Defendant Brown did any of the Defendants report Defendant Brown’s actions to any governmental department or authority, as required by the CPSL.

55. The reasons given to Plaintiffs by Defendant Community Council for their termination were not the real reasons, but rather were a pretext and cover-up of the wrongdoing on the part of Defendant Brown, in part, in order not to jeopardize a

significant funding source and to protect themselves from potential lawsuits and civil penalties.

56. In addition to avoiding potential lawsuits, Defendant School District, by and through its directors, officers, officials, agents and/or employees, concealed and suppressed the true facts surrounding the reported instances of wrongdoing, in part, to avoid having to report and respond to incidents of violence on school property, as required by law, and risk having the school placed on Pennsylvania's list of persistently dangerous schools.

57. Defendant School District, by and through Defendant Jackson and/or others, acted in concert with and reached an agreement with Defendant Community Council and Defendants Brown, Gilbert, Fox, Ross and Goodman to terminate Plaintiffs' employment, in furtherance of Defendant School District's and Defendant Community Council's policy, practice, and/or custom of covering up acts of wrongdoing, such as above-described, and/or retaliating against individuals who report such wrongdoing to avoid potential legal or other consequences, said actions causing economic and emotional harm to the Plaintiffs.

58. The Defendants' conduct was motivated by evil motive and/or intent and/or reckless and callous indifference to the Plaintiffs' federally and statutorily protected rights.

**COUNT I**  
**42 U.S.C. SECTION 1983**  
**VIOLATION OF PLAINTIFFS' FIRST AMENDMENT**  
**RIGHT TO FREE SPEECH**  
**(Against All Defendants)**

59. Plaintiffs incorporate by reference paragraphs 1 through 58 of this Complaint as though fully set forth herein.

60. At all times relevant hereto, Plaintiffs' placement in Defendant School District's classroom at Martha Washington Elementary School was a governmental benefit and/or privilege, the deprivation of which triggers First Amendment scrutiny.

61. At all times relevant hereto, the relationship between Defendant Community Council and Defendant School District, contractual or otherwise, was sufficiently close that the conduct of both Defendants, acting by and through their directors, officers, trustees, officials, agents and/or employees, acting within the scope of their employment, deprived Plaintiffs of their constitutional rights.

62. At all times relevant hereto, Defendants Community Council, Gilbert, Fox, Ross, Goodman and Brown were clothed with and, in conspiracy with Defendants School District and Jackson, acted under the color and authority of state law in that Defendants School District and/or Jackson exercised coercive power and/or provided significant encouragement to Defendant Community Council so that Defendant Community Council's actions are fairly attributable to the State.

63. At all times relevant hereto, Defendants School District and Community Council acted in accordance with their policy, practice and/or custom and/or ratified, by silence or otherwise, the unconstitutional acts of their subordinates, which directly caused constitutional harm to the Plaintiffs.

64. At all times relevant hereto, Plaintiffs engaged in speech that was protected under the First Amendment of the United States Constitution as the speech involved matters of significant public concern, to wit, the physical and emotional safety and well-being of Philadelphia public school children.

65. Plaintiffs' interest in their protected speech outweighs any countervailing interest on the part of Defendants, collectively and/or individually, in the effective or efficient operations of their businesses and/or institutions.

66. The protected speech was a substantial and/or motivating factor in Plaintiffs being terminated from their employment, which was retaliatory in nature and constituted an adverse employment action and a deliberate indifference to the constitutional rights of the Plaintiffs.

67. As a result of the retaliatory acts by the Defendants as above-described, Plaintiffs have been denied constitutionally and statutorily protected rights and have suffered economic and emotional damages.

**WHEREFORE**, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, jointly and/or severally, as follows:

- a. For compensatory damages, including but not limited to back pay, front pay, actual damages, damages for personal humiliation, harm to reputation, pain and suffering and emotional distress and mental anguish;
- b. For injunctive relief in the form of reinstatement;
- c. For punitive damages (except against Defendants School District and Brady, and Defendant Jackson in her official capacity);
- d. For the costs of suit, reasonable attorneys' fees and interest;
- e. For such other legal or equitable relief as this Court may deem just and proper.

**COUNT II**  
**42 U.S.C. SECTION 1983**  
**FIRST AMENDMENT RETALIATION AND CONSPIRACY CLAIMS**  
**(Against All Defendants)**

68. Plaintiffs incorporate by reference paragraphs 1 through 67 of this Complaint as though fully set forth herein.

69. Plaintiffs were engaged in protected activity under the First Amendment to the United States Constitution, as above-described.

70. Acting under color of state law, Defendants conspired to and did deprive Plaintiffs, in furtherance of the conspiracy, of their rights, privileges and/or immunities secured by the United States Constitution and laws by discharging them from their employment in retaliation for their reporting the above-described acts of wrongdoing on the part of Defendant Brown, said reports being of suspected child abuse under Pennsylvania's Child Protective Services Law, 23 Pa. C. S. Section 630 *et seq.*

71. Defendants engaged in a conspiratorial, intentional cover-up of the wrongdoing on the part of Defendant Brown reported by Plaintiffs in that the Defendants concealed and suppressed the true facts surrounding the reported instances of wrongdoing to protect themselves, in part, from potential lawsuits and civil penalties.

72. Defendant Community Council, by and through its agents and/or employees, participated in the cover-up also to avoid losing a significant funding source.

73. There is a causal link between the Plaintiffs' protected activity and their termination, which constituted an adverse employment action, and which was pretextual and retaliatory in nature.

74. The protected activity was a substantial and/or motivating factor in Plaintiffs' termination.

75. As a result of the conspiracy and retaliatory acts by the Defendants, Plaintiffs have been denied constitutionally and statutorily protected rights and have suffered economic and emotional damages.

**WHEREFORE**, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, jointly and/or severally, as follows:

- a. For compensatory damages, including but not limited to back pay, front pay, actual damages, damages for personal humiliation, harm to reputation, pain and suffering and emotional distress and mental anguish;
- b. For injunctive relief in the form of reinstatement;
- c. For punitive damages (except against Defendants School District and Brady and Defendant Jackson in her official capacity);
- d. For the costs of suit, reasonable attorney's fees and interest;
- e. For such other legal or equitable relief as this Court may deem just and proper.

**COUNT III**  
**VIOLATION OF PENNSYLVANIA WHISTLEBLOWER LAW**  
**(43 P.S. Section 1421 *et seq.*)**  
(Against All Defendants Except Defendant Brady)

76. Plaintiffs incorporate by reference paragraphs 1 through 75 of this Complaint as though fully set forth herein.

77. At all times relevant hereto, Defendant Community Council was a public body under the Whistleblower Law because it received funds by or through the Commonwealth and/or a political subdivision authority.

78. At all times relevant hereto, Defendant Community Council, by and through its directors, officers, employees and/or agents, and Defendants Fox, Gilbert, Ross, Goodman and Brown, were employers under the Whistleblower Law because they supervised Plaintiffs.

79. At all times relevant hereto, Defendant School District was a public body and an employer under the Whistleblower Law.

80. At all times relevant hereto, Plaintiffs were employees under the Whistleblower Law, 43 P.S. Section 1421 *et seq.*, because they performed services for wages under a contract of hire for a public body.

81. The actions and/or inactions on the part of the Defendants, as above-described, constitute wrongdoing under the Whistleblower Law, in particular, but not limited to, a violation of the Pennsylvania Child Protective Services Law (“CPSL”), 23 Pa.C.S. Section 6301, *et seq.*, said law being designed and enacted to protect the interests of the public, including school age children in Philadelphia’s public schools.

82. The actions on the part of the Defendants, as above-described, violated the Whistleblower Law because they presented substantial and significant danger to the public health and/or safety, and were likely to cause imminent risk of physical and/or emotional harm, in particular, to the students who were under the care and supervision of Defendants.

83. Plaintiffs’ discharge from their employment in retaliation for making a good faith report of suspected child abuse in accordance with the CPSL constitutes a violation of the Whistleblower Act.

84. As a result of the retaliatory acts by the Defendants, Plaintiffs have suffered economic and emotional damages.

**WHEREFORE**, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, jointly and/or severally, as follows:

- a. For compensatory damages, including but not limited to back pay, front pay, actual damages, damages for personal humiliation, harm to reputation, pain and

suffering and emotional distress and mental anguish;

- b. For the costs of suit, reasonable attorneys' fees and interest;
- c. For applicable civil fines under the Whistleblower Law;
- d. For such other legal or equitable relief as this Court may deem just and proper.

**COUNT IV**  
**VIOLATION OF PENNSYLVANIA CHILD PROTECTIVE SERVICES LAW**  
**(23 Pa.C.S. Section 6301 *et seq.*)**  
(Against All Defendants Except Defendant Brady)

85. Plaintiffs incorporate by reference paragraphs 1 through 84 of this Complaint as though fully set forth herein as though fully set forth herein.

86. At all times relevant hereto, Plaintiffs were "school employees" as defined under the Child Protective Services Law ("CPSL"), acting in the course and scope of their duties as school employees of Defendant School District.

87. At all times relevant hereto, Plaintiffs were mandated reporters under the CPSL who made good faith reports of incidents of suspected child abuse observed by them in the classroom.

88. Defendants, after receiving the above-referenced reports from Plaintiffs, failed in their duties, responsibilities and legal obligations under the CPSL to report or cause a report to be made to a department or authority in accordance with the CPSL.

89. Plaintiffs' discharge from their employment in retaliation for making good faith reports of suspected child abuse constitutes a violation of the CPSL and resulted in economic and emotional damages.

**WHEREFORE**, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, jointly and/or severally, as follows:

- a. For compensatory damages, including but not limited to back pay, front pay, actual damages, damages for personal humiliation, harm to reputation, pain and suffering and emotional distress and mental anguish;
- b. For punitive damages (except against Defendant School District and Defendant Jackson in her official capacity);
- c. For the costs of suit, reasonable attorneys' fees and interest;
- d. For such other legal or equitable relief as this Court may deem just and proper.

**COUNT V**  
**COMMON LAW CIVIL CONSPIRACY**  
(Against All Defendants except Defendant Brady)

90. Plaintiffs incorporate by reference paragraphs 1 through 89 of this Complaint as though fully set forth herein as though fully set forth herein.

91. At all times relevant hereto, Defendants acted with a common purpose to do an unlawful act, or a lawful act by unlawful means, to wit, terminating Plaintiffs in retaliation for their reports of wrongdoing on the part of Defendant Brown.

92. At all times relevant hereto, Defendants acted with evil motive and an intent to injure Plaintiffs without legal justification.

93. Defendants' acts were done in pursuance of a common purpose or design and resulted in legal damages to the Plaintiffs.


**WHEREFORE**, Plaintiffs respectfully request this Court enter judgment in their favor and against Defendants, jointly and/or severally, as follows:

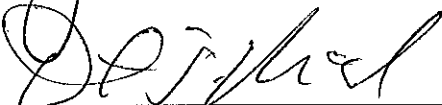
- a. For compensatory damages, including but not limited to back pay, front pay, actual damages, damages for personal humiliation, harm to reputation, pain and suffering and emotional distress and mental anguish;
- b. For punitive damages (except against Defendant School District and Defendant Jackson in her official capacity);
- c. For the costs of suit, reasonable attorneys' fees and interest;

d. For such other legal or equitable relief as this Court may deem just and proper.

**Respectfully submitted,**

**ZARWIN, BAUM, DeVITO, KAPLAN,  
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